

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Anthony Bosch,

Complainant,

vs.

ORDER OF DISMISSAL

Mary E. Hendrickson,

Respondent.

TO: Parties.

On September 15, 2014, Anthony Bosch filed a Campaign Complaint with the Office of Administrative Hearings alleging that Mary Hendrickson violated Minnesota Statutes § 211B.06 by disseminating false campaign material with respect to her candidacy for Becker County Auditor.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33.

After reviewing the Complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaint does not support a *prima facie* violation of Minn. Stat. § 211B.06.

ORDER

IT IS ORDERED:

That the Complaint filed by Anthony Bosch against Mary E. Hendrickson is **DISMISSED**.

Dated: September 17, 2014

s/Barbara J. Case
BARBARA J. CASE
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this Order is the final decision in this matter. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Respondent is a candidate for Becker County Auditor-Treasurer and the current Becker County Deputy Treasurer.

The Complaint alleges that the Respondent violated Minn. Stat. § 211B.06 by disseminating campaign material that falsely identifies her as Becker County's "Acting Auditor – Treasurer." The Complaint maintains that the Becker County Board specifically decided not to name the Respondent as the Acting Auditor – Treasurer when the person who held that position, Ryan Tangen, resigned.

In support of his complaint, the Complainant has attached minutes of the March 11, 2014, meeting of the Becker County Board of Commissioners in which Mr. Tangen's resignation and the need to appoint a replacement are discussed. According to the Board minutes, the County Administrator requested direction from the Board regarding appointing a replacement to the Auditor-Treasurer position. The minutes reflect that the Board Commissioner expressed the need for a future full Board discussion and decision on appointing a replacement. The minutes reflect further that the Respondent was then directed by the Board to "perform all the duties and functions of the office [of Auditor-Treasurer] until the position is filled by appointment by the County Board."¹

Minnesota Statutes Section 211B.06 provides in relevant part:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

Over the years, the Minnesota Supreme Court has interpreted the statute to be directed against false statements of fact and not against unfavorable deductions or inferences based on fact; even if those conclusions might be misleading or incomplete.²

¹ Meeting Minutes of the Becker County Board of Commissioners at 3 (March 11, 2014), attached to Complaint.

² *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).

Recently, however, a panel of the U.S. Court of Appeals for the Eighth Circuit ruled that Minnesota Statute § 211B.06 violates the First Amendment of the U.S. Constitution and is not enforceable.³ Moreover, the panel concluded that there is no way to narrowly construe the statute to avoid the constitutional violation. Although the case concerned a ballot measure and not a candidate's campaign material,⁴ the Court concluded generally that Section 211B.06 is not narrowly tailored to achieve the state's asserted interest in preserving fair and honest elections and preventing a fraud on the electorate. The Court found the statute to be simultaneously overbroad and underinclusive, and held that counterspeech is the better (if imperfect) means for achieving the state's asserted goal in truthful campaigns.⁵

Because a panel of the U.S. Court of Appeals for the Eighth Circuit has determined that Minn. Stat. 211B.06 is unconstitutional and unenforceable the Complaint against Ms. Hendrickson is dismissed.

B.J.C.

³ *281 Care Committee v. Arneson*, 2014 WL 4290372 (8th Cir. 2014).

⁴ *Id.*

⁵ *Id.*